[Cite as *Zimmerman v. Zimmerman*, 2015-Ohio-1700.]

IN THE COURT OF APPEALS

TWELFTH APPELLATE DISTRICT OF OHIO

BUTLER COUNTY

DANIELLE ZIMMERMAN,	:	
		CASE NO. CA2014-06-127
Plaintiff-Appellee,	:	
		O P I N I O N
	:	5/4/2015
- vs -		
	:	
DARREN ZIMMERMAN,	:	
Defendant-Appellant.	:	

APPEAL FROM BUTLER COUNTY COURT OF COMMON PLEAS
DOMESTIC RELATIONS DIVISION
Case No. DR2013-02-0184

Fred Miller, Baden & Jones Building, 246 High Street, Hamilton, Ohio 45011, for plaintiff-appellee

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M. POWELL, J.

{¶ 1} Defendant-appellant, Darren Zimmerman (husband), appeals a divorce decree of the Butler County Court of Common Pleas, Domestic Relations Division. For the reasons stated below, we affirm in part, reverse in part, and remand the matter to the trial court.

{¶ 2} Husband and plaintiff-appellee, Danielle Zimmerman (wife), were married in September 1995 and had three children during the marriage. For the majority of the

marriage, wife remained home and cared for the children while husband financially supported the family by working in travel sales. In 2012, the family moved to Cincinnati, Ohio after husband received a position in the Cincinnati office of SmarTravel. In late 2012, husband became the center director of the Indianapolis office of SmarTravel.

{¶ 3} In 2012, wife and husband began experiencing marital difficulties. In November 2012, husband gave wife a check for $8,000 and later gave wife an additional $2,500 in cash. Wife used the money to open a PNC bank checking account.[1]

{¶ 4} In January 2013, husband opened a checking account at Chase bank in his name only and directed his paycheck into that account. After that date, husband continued to deposit all of his paychecks into the Chase checking account. Husband also opened a savings account at Chase bank.[2]

{¶ 5} On February 5, 2013, wife obtained an ex parte civil protection order (CPO) against husband which prevented the parties from communicating. Husband vacated the marital residence and began residing in a hotel in Indianapolis, paid for by his employer. On February 26, 2013, wife filed a complaint for divorce, a motion for temporary custody of the children, and a motion for temporary child support. Wife was granted custody of the children and child support of $1,699 a month. The court also granted wife's motion for an ex-parte temporary restraining order, which prohibited husband from, among other things, "transferring, withdrawing, disposing of, or encumbering any interest which either party may have in * * * funds, accounts, * * * or any other asset."

{¶ 6} During the marriage, the couple had several accounts at Fifth/Third bank,

1. Wife's checking account number at PNC bank ends in 0806.

2. Husband's Chase checking account number ends in 3280. Husband's Chase saving account number ends in 3628.

including two joint checking accounts.[3] The couple also had savings accounts in the names of each of their three children at Fifth/Third bank (children's saving accounts).[4] After husband was served with the divorce complaint and restraining order, he withdrew all the money from the couple's joint Fifth/Third checking accounts and the children's savings accounts and closed the accounts. While husband closed all the accounts, he continued to pay the couple's bills, including the expenses for the mortgage, taxes, insurance, utilities, and wife's car payment.

{¶ 7} While the divorce was pending, wife filed a motion for temporary spousal support. On May 8, 2013, a magistrate ordered husband to continue paying various household expenses, including the mortgage and utilities for the marital residence, wife's vehicle payment, automobile and home insurance, preschool tuition for the youngest child, and an additional $500 to wife for unspecified monthly expenses.

{¶ 8} Wife obtained employment in May 2013, earning $12.00 an hour, for 40 hours a week. Wife's position is temporary because she is filling in for a woman on maternity leave. Wife is also unable to work a full 40 hours a week because she must leave her job during the day to transport the children to school.

{¶ 9} On May 28, 2013, husband's employment with SmarTravel through the Indianapolis office terminated, however, he remained employed with SmarTravel through the Cincinnati office. As a result, husband's employer ceased paying for his hotel in Indianapolis and husband began renting a home in Marysville, Ohio.

{¶ 10} On October 10, 2013 a trial was conducted on wife's complaint for divorce. On November 26, 2013, the trial court issued a decision and order regarding the divorce. Wife

3. The joint Fifth/Third checking account numbers ended in 6356 and 4795.

4. The account numbers for the children's savings accounts at Fifth Third bank ended in 6036, 6044, 6531.

was designated residential parent of the parties' three children. The trial court averaged husband's income over the past three years and determined that husband had annual gross income of $114,749. The court found wife's income is $10.50 an hour for 40 hours a week. Husband was ordered to pay wife $2,016 per month for child support and spousal support of $900 per month for eight years. The court also awarded husband the tax exemption for the middle child and wife the tax exemptions for the oldest and youngest children. Husband was ordered to pay $9,000 of wife's attorney fees at a rate of $400 per month.

{¶ 11} Pursuant to the court-ordered property division, husband was awarded: (1) $2,201.25 in the Fifth/Third joint checking account, ending in 4795, (2) $28.11 in the Fifth/Third joint checking account, ending in 6356, (3) $3,314.38 in the Chase checking account, (4) $119.30 in the Chase savings account, (5) the marital residence, valued at $186,800 subject to the mortgage with a principal balance of $160,000, and (6) the 2012 Town & Country van with equity of $4,243.07, as it is valued at $27,750 with a debt of $23,506.93. The court noted that husband's conduct in closing all the couple's joint accounts was financial misconduct and because husband has not provided evidence that the funds in his Chase accounts are from the Fifth/Third joint accounts and credited husband with the amounts in both the Fifth/Third and Chase accounts.

{¶ 12} The court awarded wife the 2006 Dodge Caravan and $4,408.21 in the PNC checking account. The court found the $10,000 husband gave to wife was a marital asset as having been exchanged during the marriage and therefore it was allocated between the parties pursuant to the allocation of wife's PNC checking account. The court equally divided: (1) the children's savings accounts between husband and wife, (2) the 2012 net tax refund, and (3) the Fifth/Third credit card debt.

{¶ 13} There was also a debt owing to husband's father found to be a marital debt with an unpaid balance owing of $69,112. The trial court noted that in equalizing the property

between the parties, wife owes husband $19,465.28. Therefore, the court ordered wife to pay $19,465.28 of the debt owed to husband's father at a rate of $150 a month for ten years. Husband was ordered responsible for the balance of the debt.

{¶ 14} In January and March 2014 two hearings were held regarding various issues with the court's order. A final decree of divorce was entered on May 12, 2014.

{¶ 15} Husband now appeals, asserting four assignments of error.

{¶ 16} Assignment of Error No. 1:

{¶ 17} THE TRIAL COURT'S $9,000.00 AWARD OF ATTORNEY FEES FROM APPELLANT TO APPELLEE WAS BOTH AN ABUSE OF DISCRETION AND AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE WHEN APPELLEE HAD MORE THAN FIFTEEN TIMES MORE ASSETS THAN APPELLANT TO BEGIN THE DIVORCE, APPELLANT PROVIDED APPELLEE APPROXIMATELY $4,500.00 PER MONTH IN TEMPORARY NON-TAXABLE SUPPORT, THE TRIAL COURT EQUALLY DIVIDED THE ASSETS AND DEBTS OF THE MARRIAGE, AND THE TRIAL COURT'S FINAL SUPPORT AWARD GAVE APPELLEE 55% OF THE COMBINED NET AFTER TAX INCOME OF THE PARTIES.

{¶ 18} Husband argues the attorney fee award was an abuse of discretion and against the manifest weight of the evidence. Husband argues that in light of the significant support payments he made to wife during and after the divorce and the equalization of assets and debts between the parties, it was in error to order him to pay $9,000 of wife's attorney fees. Additionally, husband maintains the court was incorrect in basing its award on husband's alleged financial misconduct. Lastly, husband contends the court should have offset the attorney fee award against the $19,465.28 property equalization payment wife was ordered to pay to husband's father.

{¶ 19} R.C. 3105.73(A) governs whether attorney fees should be awarded in a divorce action and provides:

> In an action for divorce, dissolution, legal separation, or annulment of marriage or an appeal of that action, a court may award all or part of reasonable attorney's fees and litigation expenses to either party if the court finds the award equitable. In determining whether an award is equitable, the court may consider the parties' marital assets and income, any award of temporary spousal support, the conduct of the parties, and any other relevant factors the court deems appropriate.

{¶ 20} It is well-established that an award of attorney fees is within the sound discretion of the trial court. *Foppe v. Foppe*, 12th Dist. Warren No. CA2010-06-056, 2011-Ohio-49, ¶ 34. An abuse of discretion is more than an error of law; it implies the trial court acted unreasonably, arbitrarily, or unconscionably. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219 (1983).

{¶ 21} Moreover, a manifest weight challenge concerns "'the inclination of the *greater amount of credible evidence,* offered in a trial, to support one side of the issue rather than the other.'" (Emphasis sic.) *Eastley v. Volkman*, 132 Ohio St.3d 328, 2012-Ohio-2179, ¶ 12, quoting *State v. Thompkins*, 78 Ohio St.3d 380, 387 (1997). In a manifest weight challenge "a reviewing court weighs the evidence and all reasonable inferences, considers the credibility of witnesses and determines whether, in resolving conflicts in the evidence, the finder of fact clearly lost its way and created such a manifest miscarriage of justice that the judgment must be reversed and a new trial ordered." *Schneble v. Stark*, 12th Dist. Warren Nos. CA2011-06-063 and CA2011-06-064, 2012-Ohio-3130, ¶ 67. "[E]very reasonable presumption must be made in favor of the judgment and the finding of facts." *Eastley* at ¶ 21. "If the evidence is susceptible of more than one construction, the reviewing court is bound to give it that interpretation which is consistent with the verdict and judgment * * *." *Id.*

{¶ 22} In the present case, wife incurred attorney fees in excess of $21,500 and husband stipulated to the reasonableness of those fees. In the trial court's decision, it discussed husband's conduct in closing the Fifth/Third joint checking accounts and the

children's savings accounts, thus making the funds inaccessible to wife. The court characterized this behavior as "financial misconduct" and stated that it would address husband's "financial misconduct" in the award of attorney fees. The court then ordered husband to pay $9,000 of wife's attorney fees at a rate of $400 per month. The court reasoned an attorney fee award is equitable based on the division of property, the parties' income, husband's "conduct," and husband's payment of the mortgage and other household expenses for wife's benefit while the case was pending.

{¶ 23} Upon a thorough review of the record, we find the trial court did not abuse its discretion in the attorney fee award, nor do we find the trial court's decision was against the manifest weight of the evidence. The evidence demonstrated wife has significantly less earning capacity than husband because wife remained at home throughout the marriage while husband financially supported the family, earning a progressively higher salary in travel sales. Wife is currently employed with an annual income of $21,000 while husband's annual income is $114,749. Due to the discrepancy in income and earning ability, the court ordered husband to pay wife spousal support of $900 per month for eight years and child support of $2,016 per month. While these support payments will increase wife's monthly income, wife was also designated the residential parent of the parties' three children and, due to her closer day-to-day relationship with the children, will incur more expense and have less opportunity to increase her income.

{¶ 24} Additionally, the court divided the parties' assets and liabilities equally, despite the differences in earning ability. Wife was ordered to pay $19,465 of the loan to husband's father, half of the credit card debt and awarded the assets in her PNC account, the equity in the 2006 van, half of the funds in the children's savings accounts, and half of the net tax refund. While husband was ordered to pay $49,647 of the loan to his father and the mortgage for the marital residence, husband also received the majority of the assets.

Specifically, husband was allocated the marital residence, the Fifth/Third joint checking accounts and the Chase accounts, and the 2012 Town & Country van.

{¶ 25} The evidence also established husband withdrew all the money in the parties' joint accounts and closed the accounts. Husband admitted as much but explained that because the CPO prohibited the couple from communicating, he was concerned wife would withdraw funds from the accounts and cause bills to be unpaid or the account to be overdrawn. Husband also maintained that wife was not harmed by this transfer because he immediately deposited the funds into his Chase account and this account was allocated in the division of property. Despite these explanations, closing the accounts violated the temporary restraining order and rendered marital funds inaccessible to wife during the pendency of the divorce. Additionally, we are not persuaded that the Chase account contained the funds from the closed joint Fifth/Third accounts because as the trial court noted, husband "has provided no evidence that the funds from the March statement [of the Chase account] included the funds withdrawn from the [Fifth/Third] account." *See Homme v. Homme*, 12th Dist. Butler No. CA2010-04-093, 2010-Ohio-6080, ¶ 61.

{¶ 26} Further, we find no error in the court considering husband's "financial misconduct" in placing marital assets beyond the reach of wife in the attorney fee award even though the court did not sanction husband for the financial misconduct under R.C. 3105.171(E)(4). R.C. 3105.171(E)(4) provides that if a spouse has engaged in "financial misconduct," a court may compensate the offended spouse with a distributive award or a greater share of marital property. The trial court's characterization of husband's closing of the marital bank accounts as "financial misconduct" appears to be in the generic sense of the phrase as opposed to the "financial misconduct" referred to in R.C. 3105.171(E)(4). However, the trial court was free to consider "the conduct of the parties" and other relevant factors in awarding attorney fees. R.C. 3105.73. Therefore, the trial court was permitted to

consider not only a party's "financial misconduct" under R.C. 3105.171(E)(4) but also consider a spouse's general conduct. *See Young v. Young*, 5th Dist. Tuscarawas No. 09AP1000049, 2011-Ohio-2347, ¶ 53 (financial misconduct justified attorney fee award); *Wilkinson v. Wilkinson*, 10th Dist. Franklin No. 13AP-73, 2013-Ohio-3627, ¶ 12; *Cirino v. Cirino*, 9th Dist. Lorain No. 11CA009959, 2011-Ohio-6332, ¶ 14-15 (court permitted to consider party's conduct in attorney fee award when no contempt finding).

{¶ 27} Husband also maintains the attorney fee award was in error because both while the case was pending and after the divorce was finalized, wife was in a financially superior position than husband. Wife acknowledged that at the time the parties separated, she had deposited $10,000 from husband in her PNC account. Additionally, while the divorce case was pending, husband provided wife child support and continued to pay various household expenses. Husband's expenses also changed during the case because his employer no longer paid for housing after his position was terminated in Indianapolis. However, despite the expenses paid by husband, wife had no access to the marital funds in the joint accounts and had no independent source of income until May 2013 when she obtained employment and the temporary support orders were issued. Therefore, wife had to rely on the $10,000 from husband to pay her attorney fees and any other unexpected expenses. During this entire time, wife remained residential parent of the parties' three children.

{¶ 28} Further we are not persuaded by husband's argument that the attorney fee award was in error because the court "chastised" husband for failing to provide bank statements as of the valuation date for the Fifth/Third and Chase accounts while not reprimanding wife who also failed to provide a bank statement for her PNC account. While the court did note husband's failure to provide bank statements as of the valuation dates and did not express these same concerns with wife, the court did not specifically mention this

failure in its attorney fee award.[5] Husband has failed to offer any evidence as to why this renders the attorney fee award inequitable.

{¶ 29} Finally, the court did not err in not offsetting the attorney fee award against the property equalization payment wife is paying to husband's father. Under the circumstances of this case, where wife has less earning potential than husband, the assets and debts were equally divided between the parties, wife is the residential parent of the three children, husband engaged in conduct that violated the temporary restraining order, and wife remains responsible for more than $11,000 of attorney fees, the attorney fee award was equitable.

{¶ 30} Consequently, the trial court's decision granting wife an award of $9,000 toward her attorney fees was neither against the manifest weight of the evidence nor an abuse of discretion.

{¶ 31} Husband's first assignment of error is overruled.

{¶ 32} Assignment of Error No. 2:

{¶ 33} THE TRIAL COURT'S FINDINGS REGARDING THE VALUE OF VEHICLES AND BANK ACCOUNTS WERE AGAINST THE MANIFEST WEIGHT AS THEY ARE NOT SUPPORTED BY THE EVIDENCE PRESENTED AT TRIAL.

{¶ 34} Consideration of this assignment of error implicates the valuation date for various marital assets. The parties' briefs agree that the valuation date is February 5, 2013, the date the parties separated. We find no specific reference to this date in the trial court's November 26, 2013 decision and order. However, the trial court does make repeated references to the "valuation date" or "agreed valuation date" in its decision and order. We therefore proceed upon the basis that the valuation date for the marital assets is February 5,

5. Additionally, we note that to the extent we find the trial court erred in the second assignment of error by not providing specific reasons for its use of a different valuation date of the bank accounts, this does not affect our decision that the attorney fee award is equitable.

2013.

{¶ 35} Husband argues that in dividing the marital property between the parties, the court's valuation of the 2012 Town & Country van, the Fifth/Third joint checking account, and wife's PNC checking account was against the manifest weight of the evidence.

{¶ 36} R.C. 3105.171 governs the equitable division of marital property in an action for divorce. In dividing marital property, a trial court shall "divide the marital property equally, unless the court finds an equal division would be inequitable." *Grow v. Grow*, 12th Dist. Butler Nos. CA2010-08-209, CA2010-08-218, and CA2010-11-301, 2012-Ohio-1680, ¶ 12, citing R.C. 3105.171(C)(1). "In making these findings, the trial court must assign a value to all of the marital property." *Id.* at ¶ 12, citing R.C. 3105.171(B).

{¶ 37} Additionally, we review valuation of marital property in a divorce case under a manifest weight of the evidence standard. *Corwin v. Corwin*, 12th Dist. Warren Nos. CA2013-01-005 and CA2013-02-012, 2013-Ohio-3996, ¶ 40. As stated above, a manifest weight challenge concerns '"the inclination of the *greater amount of credible evidence,* offered in a trial, to support one side of the issue rather than the other."' (Emphasis sic.) *Eastley*, 2012-Ohio-2179 at ¶ 12, quoting *Thompkins*, 78 Ohio St.3d at 387. A reviewing court weighs the evidence, considers the credibility of witnesses and determines whether the finder of fact clearly lost its way and created such a manifest miscarriage of justice that the judgment must be reversed and a new trial ordered. *Id.*

Town & Country Van

{¶ 38} Husband argues the trial court erred in valuing the couple's 2012 Town & Country van, as worth $27,750. Husband maintains that in coming to this valuation, the court erroneously relied on a valuation for a more expensive, limited model of a Town & Country van. Instead, husband contends the court should have relied on his testimony in valuing the Town & Country as a touring model.

{¶ 39} Husband and wife purchased the Town & County van new in August 2012 for $29,792. During the divorce proceedings, the parties stipulated that husband would retain this vehicle and assume its related debt. However, the couple did not agree as to the value of the Town & Country. On the first day of trial, wife submitted a National Automobiles Dealer Association (NADA) valuation for a limited model, 2012 Town & Country, "clean" trade-in value, without options, of $27,750. Wife did not testify as to the specific model of the couple's Town & Country, but stated she believes the vehicle is in a "clean" condition.

{¶ 40} Husband submitted a NADA valuation for a touring model, 2012 Town & Country, with an "average" trade-in value of $19,225 and a "clean" trade-in value of $20,350. Husband did not initially identify the model of the Town & Country. However, on cross-examination, wife's counsel asked husband if the Town & Country is a "touring or a limited," to which husband stated the van is "touring," and "it's the lowest of the Chrysler Town & Countries." The title and purchase contract for the Town & Country were also admitted into evidence. The title identifies the model of Town & Country as "TWC," but no explanation at trial was given as to the meaning of "TWC." The purchase contract does not identify the model of the van.

{¶ 41} In the November 26, 2013 decision and order, the trial court found the value of the Town & Country is $27,750. The court also found the debt of the vehicle as of the valuation date, was $23,506.93 and therefore the net marital value of the vehicle is $4,243.07.

{¶ 42} Thereafter, two hearings were held regarding concerns the parties had with the November decision. At both hearings, husband's counsel argued the court valued the Town & Country incorrectly because the court relied on wife's valuation of a limited model Town & Country and the couple's automobile was a touring model. The court refused to reconsider its valuation of the Town & Country as a limited model, stating:

> Okay, I looked carefully through the paperwork, and particularly the Title, and I could not really tell what the model was. Uh, I don't know whether it was a, uh, touring van, a wagon I—There are a number of different options and trim packages, as you know, on many of these vehicles. So I went with the number that I felt was consistent with the purchase price, uh, and that being 27,750 * * *. *We listened to the evidence. I did not—There was not any testimony as to what package, what trim package, this wagon was. * * **

(Emphasis added.)

{¶ 43} We find the trial court's decision valuing the Town & Country as a limited model, for $27,750 was against the manifest weight of the evidence. Contrary to the trial court's statement, husband did testify that the Town & Country was a touring model. It is the trial court's prerogative to reject husband's testimony as not credible or discount its weight vis-à-vis the other evidence. Here, the trial court did neither and merely overlooked the testimony.[6] Therefore, we reverse the court's valuation of the Town & Country and remand for the trial court to consider husband's testimony as to the model of the Town & Country along with the other evidence submitted regarding the valuation of the Town & Country, such as the purchase price, the valuation date, and the debt remaining on the vehicle as of the valuation date. In doing so we do not otherwise restrict the trial court's exercise of its discretion as to how it should credit husband's testimony or direct as to what value should be placed upon the Town & Country. Rather, after weighing the evidence, the trial court may value the Town & Country as is reasonable under the circumstances.

Bank Accounts

{¶ 44} Husband also asserts the court incorrectly valued wife's PNC checking account and the parties' joint Fifth/Third checking account, ending in 4795. In regards to wife's PNC account, husband argues the court erred in relying on her answers to interrogatories to find

6. We recognize we operate with advantages not available to the trial court and particularly the perfect recall provided by a transcript.

the balance of this account was $4,408 instead of relying on her testimony that the balance was $8,000 or $9,000.

{¶ 45} At trial, wife testified that husband gave her $8,000 in November 2012 and later gave her an additional $2,500 in cash in January 2013. Wife stated she kept $500 in cash and opened up a PNC checking account with the remainder of the money. As of the date the parties separated, wife stated the PNC account held what was "left" of the money given to her by husband. During trial, wife requested that the court allow her to keep the $8,000 in her PNC checking account as her separate, non-marital property because it was gifted to her by husband. On cross-examination, wife agreed that she had approximately $9,000 in her PNC account in February 2013. In wife's answers to interrogatories, which were admitted into evidence, wife responded that as of "the date of this pleading," April 5, 2013, the balance in her PNC checking account was $4,408.

{¶ 46} As stated above, February 5, 2013 is the valuation date for the parties' marital property. The court found the balance of wife's PNC checking account was $4,408, "based on the only evidence of value: [wife's] response to interrogatories." The court noted that while husband "has listed [the PNC] account statements in his exhibit list, the exhibit was not offered into evidence."

{¶ 47} We find that the trial court's valuation of wife's PNC checking account as $4,408 was error. The court's statement that it relied on wife's answers to interrogatories to establish the balance of the PNC account because it was the only evidence of value was incorrect. Wife testified that in February 2013, she had $8,000 to $9,000 remaining in her PNC account. In relying on wife's responses to interrogatories to establish the balance in the PNC account, the court valued wife's PNC account on the interrogatories date of April 5, 2013, instead of the established valuation date of February 5, 2013.

{¶ 48} Generally, a domestic relations court should use the same set of dates in

valuing marital property; however, the circumstances in some cases may require the court to employ different dates for valuation. *Hyslop v. Hyslop*, 6th Dist. Wood No. WD 01-059, 2002-Ohio-4656, ¶ 34. If a court values certain marital assets with different valuation dates, the court shall set forth "specific reasons for doing so, with those reasons having a basis in the evidence presented." *Homme*, 2010-Ohio-6080 at ¶ 57. A trial court also has the discretion "to use different valuation dates where the valuation or account balances at a certain date were the only evidence before the court." *Id.* at ¶ 62.

{¶ 49} Although the trial court had the discretion to rely on wife's responses to interrogatories in valuing the PNC account as of April 5, 2013 instead of relying on wife's testimony as to the value of the PNC account in February 2013, a time more proximate to the February 5, 2013 valuation date, the court abused its discretion by failing to specify its reasons for using this alternate valuation date.

{¶ 50} Husband also argues the court incorrectly valued the joint Fifth/Third checking account ending in 4795. Husband argues the court abused its discretion in valuing the account as $2,201.25, on February 10, 2013 instead of using the balance of the account on February 8, 2013 of $576.13.

{¶ 51} At trial, husband submitted a print-out of the couple's account balances at Fifth/Third bank. The document indicates that on February 10, 2013, husband logged into the account online and lists two columns of figures. The first column states that the balance of the Fifth/Third account as of February 8, 2012 was $576.12. In the next column, the statement indicates that the "available balance" is $2,201.25. In valuing the Fifth/Third checking account, the trial court found "the available balance in the account as of 2/10/13 was $2,201.25" and awarded the assets to husband as an offset against debt owed to wife.

{¶ 52} We also find that the trial court abused its discretion in valuing the Fifth/Third checking account. The established valuation date in this case was February 5, 2013. While

neither party presented evidence as to the value of the Fifth/Third account as of the established valuation date, there was evidence regarding the balance of the account on February 8, 2013 which was closer to the established valuation date than the February 10, 2013 date used by the court. As stated above, while the court has discretion to use a different valuation date, it must provide specific reasons for doing so. Therefore, we find the trial court abused its discretion in valuing the Fifth/Third account as of February 10, 2013 without explaining its reason for choosing a date more remote from the February 5, 2013 valuation date. *See Angles v. Angles*, 5th Dist. Fairfield No. 00CA1, 2000 WL 1369958, *4 (Sept. 15, 2000); *Rash v. Rash*, 6th Dist. Fulton No. F-04-016, 2004-Ohio-6466, ¶ 61-62.

{¶ 53} Because a domestic relations court has the discretion to select different valuation dates, we decline to usurp its authority by assigning a valuation figure for the accounts. Rather, on remand, the trial court shall assign a valuation for the subject bank accounts and provide its reasoning for selecting a particular valuation date if different from February 5, 2013. *See Hyslop*, 2002-Ohio-4656, ¶ 39.

{¶ 54} Husband's second assignment of error is sustained.

{¶ 55} Assignment of Error No. 3:

{¶ 56} THE TRIAL COURT'S DECISION TO ORDER APPELLEE TO PAY THE PROPERTY EQUALIZATION PAYMENT DIRECTLY TO ONE OF THE CREDITORS INSTEAD OF APPELLANT WAS AN ABUSE OF DISCRETION, ESPECIALLY WHEN THIS DECISION WAS BASED ON A FINDING THAT THE DEBT WAS NOT AN ARM'S LENGTH TRANSACTION.

{¶ 57} Husband argues the court made multiple errors in ordering the repayment of the debt owed to husband's father. Husband maintains the court's allocation of the debt between the parties will result in paying more than the debt is worth. Husband asserts the court abused its discretion when it required wife to direct the monthly payment to husband's

father over a ten-year period. Additionally, husband again contends the court should have offset his payment of the attorney fees against wife's allocation of the debt.

{¶ 58} As stated above, in dividing marital property, a trial court shall "divide the marital property equally, unless the court finds an equal division would be inequitable." *Grow*, 2012-Ohio-1680 at ¶ 12, citing R.C. 3105.171(C)(1). Because the court must consider both the assets and liabilities, an equitable division of marital property necessarily implicates an equitable division of marital debt. *Ornelas v. Ornelas*, 12th Dist. Warren No. CA2011-08-094, 2012-Ohio-4106, ¶ 32. A trial court's decision regarding property division will not be reversed absent an abuse of discretion. *Dollries v. Dollries*, 12th Dist. Butler Nos. CA2012-08-167 and CA2012-11-234, 2014-Ohio-1883, ¶ 10.

{¶ 59} In March 2012, husband and wife signed a personal loan agreement borrowing $88,000 from husband's father. The loan was to pay off significant credit card debt incurred by the couple. The loan agreement provided that husband's father did not expect to make any profit from the loan and the couple was only to pay the interest husband's father was charged by his lender.

{¶ 60} The trial court found the debt to husband's father was marital and the balance of the loan as of the valuation date was $69,112.67. The court then stated, "[wife] is ordered to pay $19,465.28 toward this debt pursuant to Property Equalization below. [Husband] shall pay the balance of this loan and hold [wife] harmless. The Court allocates the debt in this manner as an offset against assets received by [husband]."

{¶ 61} The court noted that in equalizing the parties' marital assets, wife would owe husband $19,465.28. Therefore, the court ordered wife to discharge a portion of the marital debt owing to husband's father equal to the property equalization amount of $19,465.28, at a rate of $150 per month, for ten years and directly to husband's father. The court based the repayment structure on husband's "financial misconduct" in closing the couple's joint

accounts, the fact that the loan from husband's father was not an arm's length transaction, and that husband will retain the assets with the greatest value, the marital residence and the money accumulated in the Fifth/Third and Chase checking accounts. Additionally, the court stated husband may enforce any noncompliance by wife as he is also liable on the debt.

{¶ 62} We find that the trial court did not abuse its discretion in ordering wife to pay $19,465.28, at a rate of $150 per month, for ten years directly to husband's father. We begin by noting that husband's argument that the court ordered husband to "assume 100% of the debt and also ordered [wife] to pay $19,465.28 toward this debt directly to the creditor," resulting in an overpayment of the debt is erroneous. It is clear from the trial court's decision that the court ordered husband to be responsible for the balance of the loan *less* wife's obligation. Therefore, while wife is obligated to pay $19,465.28, husband's obligation is $49,509.57.

{¶ 63} Husband's arguments regarding the different ways the trial court *could* have structured wife's repayment of the debt do not demonstrate an abuse of discretion. While the court could have ordered wife to pay husband, could have ordered wife to pay the loan over a shorter period of time, or could have ordered husband's monthly attorney fees payments to be offset against wife's monthly debt repayment to husband's father, the court had the discretion to structure wife's debt repayment in a manner it believed to be equitable under the facts and circumstances of this case. *See Dollries*, 2014-Ohio-1883 at ¶ 26-30 (no abuse allowing husband to pay wife $6,000 monthly for 32 years). The evidence demonstrated that husband closed the couple's joint accounts and placed the funds in an account inaccessible to wife, husband has a greater earning ability than wife, wife is the residential parent of the three children, and husband will retain the marital assets with the greatest value. The method ordered by the trial court maintains a greater monthly cash flow for wife and consequently benefits her and the children. The trial court's decision was not arbitrary,

unreasonable, or unconscionable.

{¶ 64} Husband's third assignment of error is overruled.

{¶ 65} Assignment of Error No. 4:

{¶ 66} THE TRIAL COURT'S ORDER REGARDING THE ALLOCATION OF DEPENDENCY EXEMPTIONS WAS AN ABUSE OF DISCRETION AS THE PARTIES STIPULATED TO THE DIVISION OF THE DEPENDENCY EXEMPTIONS.

{¶ 67} Husband argues the trial court erred in allocating wife two of the tax exemptions for the children and allowing husband to claim only one of the children as a tax exemption. Husband maintains this was in error because the parties stipulated on the record to a different exemption arrangement. Husband also asserts the court used several incorrect figures in determining the greatest net tax benefit between the parties for the tax exemptions.

{¶ 68} An appellate court reviews a trial court's decision allocating tax exemptions for dependents under an abuse of discretion standard. *Rainey v. Rainey*, 12th Dist. Clermont No. CA2010-10-083, 2011-Ohio-4343, ¶ 38. However, this discretion is both guided and limited by the statutory requirements of R.C. 3119.82. *Ornelas*, 2012-Ohio-4106 at ¶ 52.

{¶ 69} When a trial court issues, modifies, or reviews a child support order, the court must decide which parent will receive the tax exemption for the minor children. R.C. 3119.82. If the parties do not agree which parent should claim the child as a dependent, the court may grant the non-residential parent the tax exemption for federal income purposes, if the court determines that this furthers the best interest of the children and the payments for child support are substantially current as ordered by the court for the year in which the child will be claimed as a dependent. R.C. 3119.82.

{¶ 70} In determining the best interest of the child, the court shall consider a number of factors, including: any net tax savings, the relative financial circumstances and needs of the parents and child, the amount of time the child spends with each parent, the eligibility of

either or both parents for the federal earned income tax credit or other state or federal tax credit, and any other relevant factor concerning the best interest of the child. R.C. 3119.82.

{¶ 71} The Internal Revenue Code creates a presumption in favor of awarding the tax exemption to the residential parent. *Burns v. Burns*, 12th Dist. Warren No. CA2011-05-050, 2012-Ohio-2850, ¶ 27. If there is a disagreement as to which parent should claim a child as a dependent, "the burden is on the nonresidential parent to produce competent and credible evidence to show that allocating the dependency exemption to the nonresidential parent would be in the best interests of the child." *Id.*, quoting *Meassick v. Meassick*, 171 Ohio App.3d 492, 2006-Ohio-6245, ¶ 15 (7th Dist.).

{¶ 72} In the present case, wife was designated residential parent of the parties' three children. At the time of the divorce hearing, the couple's children were 14 years old, 11 years old, and 3 years old. In allocating the exemptions, the court noted in its decision, "[t]he parties discussed on the record that they would each take the dependency exemption for tax purposes for one of the younger children, and then alternate the exemption for [the oldest child]; however, the parties were never questioned on the record." The court went on to state that it conducted a FinPlan analysis and that the greatest net tax benefit for the couple is when husband claims the dependency exemption for one child and wife claims the exemption for two children.[7] The court then stated that for "tax year 2013 and thereafter," wife shall claim the tax exemption for the oldest and youngest children and husband shall claim the tax exemption for the middle child.

{¶ 73} The FinPlan used by the court and labelled "2013 Annual" calculated the tax consequences of wife and husband. While wife did not obtain employment until May 2013,

7. "A FinPlan analysis is a computer generated calculation * * * that determines the amount of money each parent contributes to the household. The analysis is used to determine such issues as which parent is entitled to the dependency exemption for income tax purposes." *Carter v. Carter*, 9th Dist. Summit No. 21156, 2003-Ohio-240, fn 1.

the court prorated wife's income for 2013 for purposes of the FinPlan analysis as if she worked the entire year. Similarly, while husband did not pay wife taxable spousal support in 2013, the FinPlan analysis was based upon husband paying an annual amount of spousal support pursuant to the divorce decree.

{¶ 74} We find the trial court did not abuse its discretion in its allocation of the tax exemptions of the children. Husband's contention that the parties' stipulated to the allocation of the tax exemptions is without merit. Counsel for husband and wife did discuss a possible agreement regarding the tax exemptions on the record, however, while counsel was negotiating all of the details of the arrangement, the court interrupted the parties and stated, "[w]hy don't you guys talk about it. I don't want you to negotiate on the record." At that point, the court moved on to other issues, and the issue of tax exemptions was never addressed again with the court. Consequently, there was not a stipulation as to the allocation of the tax exemptions.

{¶ 75} Wife was designated the residential parent of the couple's three children and therefore there was a presumption she receive all three tax exemptions for the children. Husband argues it would be favorable to him for 2013 tax purposes to be granted the tax exemptions. However, the inquiry as to how a particular allocation of tax exemptions serves the children's best interest is much broader than favorable tax consequences for one party or another. *See Burns*, 2012-Ohio-2850 at ¶ 28. As residential parent, wife has the children the majority of the time and will incur more daily expenses associated with them. Additionally, wife has less income earning potential than husband and must support herself and three children, after receiving spousal and child support, on only slightly more income than husband. While some of the figures in the FinPlan analysis might have been incorrect for calendar year 2013, the trial court's use of the FinPlan was to approximate the tax burden of husband and wife in 2013 and "thereafter." The FinPlan certainly was an accurate

reflection of the parties' relative financial circumstances for years subsequent to 2013, unless circumstances change. Therefore, it was not an abuse of discretion to prorate wife's 2013 income as if she had worked the entire year of 2013 and to use the annual divorce decree spousal support husband was ordered to pay in completing the FinPlan analysis.

{¶ 76} In light of the presumption in favor of the residential parent to be granted the tax exemptions for the minor children and the facts of this case, we do not find the trial court was arbitrary, unreasonable, or unconscionable in its allocation of the tax exemptions. Husband's fourth assignment of error is overruled.

{¶ 77} Judgment affirmed in part, and reversed in part, and the cause is remanded for proceedings consistent with this opinion.

PIPER, P.J., and HENDRICKSON, J., concur.